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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,238	12/15/2003	Michael A. Breining	2734.496-07	2289

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EXAMINER
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MIGGINS, MICHAEL C

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/734,238

Applicant(s)

BREINING ET AL.

Examiner

Michael C. Miggins

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1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

**REJECTIONS WITHDRAWN**

1. There are no rejections withdrawn

**REJECTIONS REPEATED**

2. All of the 35 USC 103(a) rejections set forth in the non-final rejection of 2/22/05, pages 3-5, paragraphs 5-6 are repeated for the reasons of record. All of the double patenting rejections set forth in the non-final rejection of 2/22/05, pages 5-12, paragraphs 7-17.

**NEW REJECTIONS**

3. There are no new rejections.

**ANSWERS TO APPLICANT'S ARGUMENTS**

4. Applicant's arguments filed 5/23/05 have been carefully considered but are deemed unpersuasive.

The limitation "polyethylene admixture" has previously been construed to mean a polyethylene mixture. Applicant does not claim a mixture of polyethylene's at all. Rather, applicant claims an admixture with no further information in the claim about what is contained in the admixture. Webster's dictionary defines admixture as an element or substance added by mixing. Therefore, the broadest interpretation of "admixture" is anything in any concentration that is mixed with the polyethylene. If one

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molecule migrates into the polyethylene layer during heating, than a polyethylene admixture is obtained since applicant provides no further information about the admixture in the claim. With regard to the term "effective", Amberg clearly provides a polyethylene which is effective to prevent penetration of liquid into the paper and is discussed below. The examiner agrees with applicant's interpretation of the limitation "a laminate that is foamable under fabrication conditions". However, applicant has admitted in the specification, pages 2-3, that such a condition is well known. The examiner agrees with applicant's interpretation of "inside surface laminate", "bottom panel member" and "paper-base".

Applicant has argued that Amberg does not teach a polyethylene admixture as is claimed in claims 16 and 42. However, Amberg teaches a bi-layer of polypropylene and polyethylene wherein heat is applied to the bi-layer in an amount sufficient to make the polyethylene molten (see column 4, lines 58-75). While the polypropylene is not made molten due to its higher softening point, the polyethylene will leach some polypropylene into the polyethylene layer, albeit a small amount. However, when a small amount of polypropylene is leached into the polyethylene layer an admixture is obtained because an element or substance is added by mixing albeit a small amount. Applicant provides no information in the claim about the admixture so such an interpretation fits well within the broadest reasonable interpretation of the claim. Although claims are read in light of the specification, limitations are not read into the claims from the specification.

Therefore, because admixture is not further defined in the claims a polyethylene with a

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small amount of polypropylene or another impurity reads on applicant's claims as written.

Applicant has argued that there is no reasonable expectation of success. However, the admitted prior art was relied upon to provide the outer foam coating. There is simply no teaching in Amberg which directly teaches away from providing an outer layer of foam. In fact one would strongly be motivated to provide an outer foam layer for the heat insulation properties that the foam would provide.

Applicant has argued that Amberg does not disclose that the bottom closure and the body of the container are not secured or sealed together by the plastic lining but instead the plastic lining merely covers and protects the porous joint of the body and bottom closure from the contents of the container. The examiner does not agree with this interpretation. The polypropylene/polyethylene bi-layer covers, seals and prevents leaks. It is specifically stated that the container through the liner is impervious and leak proof (column 2, lines 3-23). Furthermore, the polyethylene is used to seal the polypropylene to the entire interior of the container (column 2, lines 3-23, column 2, line 68 through column 3, line 10) thus making the container impervious and leak proof.

Applicant has argued that the Amberg does not disclose a polyethylene admixture effective to form a liquid tight seal between the body member and bottom panel member. However, applicant does not claim such a limitation. Applicant only claims a polyethylene admixture effective to prevent penetration of liquid into the paper during use. The bi-layer of Amberg clearly performs this function because it is specifically stated that the container through the liner is impervious and leak proof

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(column 2, lines 3-23). Furthermore, the polyethylene is used to seal the polypropylene to the entire interior of the container (column 2, lines 3-23, column 2, line 68 through column 3, line 10) thus making the container impervious and leak proof.

The examiner acknowledges applicant's request to hold the double patenting rejections in abeyance until allowable subject matter is indicated. A terminal disclaimer can be filed to overcome the double patenting rejections.

With regard to the double patenting rejections applicant has essentially argued the same points as discussed above and the examiner's arguments are repeated for the double patenting rejections as well.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael C. Miggins  
Primary Examiner  
Art Unit 1772



MCM  
August 5, 2005